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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/856,244	05/17/2001	Maxon Duncan	604.12-US1	3875

35856 7590 08/25/2005

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EXAMINER

LEZAK, ARRIENNE M

ART UNIT PAPER NUMBER

2143

DATE MAILED: 08/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/856,244

Applicant(s)

DUNCAN ET AL.

Examiner

Arrienne M. Lezak

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

DETAILED ACTION

Applicant's §103 arguments with respect to claims 1-8 have been considered but are moot in view of the new ground(s) of rejection. Examiner maintains the §112 rejection as noted herein.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

2. Claim 6 & 7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, Examiner finds the claim language "...is at least partially based on..." to be unclear, requiring alternate wording.

Specifically, Examiner finds that the factors determining gateway selection are not enumerated such that one of ordinary skill in the art would know exactly what Applicant claims as their method for gateway selection. As such, amendment is required to clarify the exact factors comprising gateway selection.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-6 & 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over extensive consideration of the teachings of US Patent 5,774,668 to Choquier.

5. Regarding Claims 1-3, 6 & 8, Choquier discloses a client-server architecture, (Figs. 1 & 3 & Col. 6, lines 47- 49), teaching a method for load-balancing outgoing e-mail via e-mail source (user) selection comprising:

- providing a network comprising an initiator (gateway) and at least two alternative gateways (application servers) distinct from the initiator (gateway), (per pending Claims 1, 2 & 8), wherein each gateway (application server) comprises a set of multimedia files, (Col. 6, lines 1-22), for inclusion in generated messages and the set on any one gateway including the same files as the sets on all the other gateways, (per pending Claims 2 & 8), (Col. 8, lines 64-67 & Col. 9, lines 1-11), (Examiner notes that redundant load-balancers obviously maintain many identical sets of files, which files include multimedia files, particularly in light of the fact that Choquier teaches network connection to web servers and multimedia services wherein data needed for an enumerated email link would obviously either reside on the email application server or be made available there through); and
- selecting a gateway from the at least two gateways, wherein attempts to minimize the time between when the gateway is requested to generate the message and when the recipient receives the message is

a factor in the selection of the gateway, (per pending Claims 6 & 8), (Col. 1, lines 41-67; Col. 2; & Col. 3, lines 1-52), (Examiner notes that load-balancers within a network scenario are well-known in the art to be chosen based upon many factors, which factors obviously include minimal round trip time);

- the initiator (gateway) comprising a list of the multi-media files, (Col. 6, lines 1-22), included in the sets on the gateways, (application servers): comprising a database of message recipients which includes data on each recipient including the identified recipient: identifying a mail message recipient and using the data for the identified recipient in identifying advertising material to be mailed to the recipient, (per pending Claims 1, 3 & 8), (Col. 1, lines 41-67; Col. 2; Col. 3, lines 1-52; Col. 9, lines 24-67 & Col. 10, lines 1-18), (Examiner notes that Choquier teaches a user database for access to user mailboxes and user access to on-line news and magazine articles, which magazine and news access obviously includes a subscription functionality wherein a correlation between users and services would need to be recorded and maintained in order to properly fulfill subscriptions and provide for other related information in solicitation form (advertisements). Thus, Examiner notes that it would have been obvious to include other information in the user database for solicitation/subscription/linking purposes);

- requesting the selected gateway to generate an e-mail message which includes the identified advertising material and to send the generated message to the recipient, (per pending Claim 8), (Col. 9, lines 24-67 & Col. 10, lines 1-18), (Examiner again notes that emails with embedded Internet links are well-known in the art. Further, in light of Choquier, as noted above, user correlation as applied to email addresses and on-line services would have been obvious. In other words, Examiner notes that the use of an application server(s) by an external service (news/magazine) provider would have been obvious in light of the possibility of a subscription service and an email address database); and
- the selected gateway generating and sending the requested message, (per pending Claims 1 & 8), (Col. 1, lines 41-67; Col. 2; Col. 3, lines 1-52; Col. 9, lines 24-67 & Col. 10, lines 1-18).

Thus, Claims 1-3, 6 & 8 are found to be unpatentable over considerable consideration of the teachings of Choquier.

6. Regarding Claims 4 & 5, Choquier is relied upon for those teachings noted herein. Choquier further discloses a method for load-balancing outgoing e-mail wherein the mail network is a WAN, (per pending Claim 4), and wherein the gateways are coupled to the INTERNET such that the generated message is sent to the recipient via the INTERNET, (per pending Claim 5), (Figs. 1 & 3). Thus, Claims 4 & 5 are found to be unpatentable over considerable consideration of the teachings of Choquier.

7. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over the combined teachings of US Patent 5,774,668 to Choquier in view of US Patent 5,765,033 to Miloslavsky.

8. Regarding Claim 7, Choquier is relied upon for those teachings noted herein. As noted herein, Choquier discloses a method for load-balancing wherein load-balancers within a network scenario are well known in the art to be chosen based upon many factors, which factors obviously include minimal RTT. Choquier does not specifically enumerate a gateway determination of round trip time. Miloslavsky specifically teaches an email server on a (LAN or WAN) data network, (Col. 2, lines 57-62), and the use of a time stamp, which time stamp would obviously provide for an RTT determination, (Col. 4, lines 20-59), wherein it would have been obvious to incorporate the Miloslavsky time stamp functionality into the Choquier dynamic load-balancing system for purposes of making more efficient use of available processing resources, (Choquier – Col. 1, lines 24-29), wherein again it is well-known in the art that load-balancers will consider round-trip time when making a determination as the best resources via the best means at the time of request. Thus, Claim 7 is found to be unpatentable over the combined teachings of Choquier in view of Miloslavsky.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arrienne M. Lezak whose telephone number is (571)-272-3916. The examiner can normally be reached on M-F 8:30-4:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Wiley can be reached on (571)-272-3923. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Arrienne M. Lezak
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